

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
McALLEN DIVISION**

**LEONARDO HERNANDEZ  
LOPEZ**

**Plaintiff**

**VS.**

**FRANCISCO ARVIZU, AND  
AGROMOD PRODUCE, INC.**

**Defendants**

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**CIVIL ACTION NO.**

**Jury Demanded**

**PLAINTIFF'S ORIGINAL COMPLAINT**

MAY IT PLEASE THE COURT:

Plaintiff Leonardo Hernandez Lopez brings this cause of action against Defendants Francisco Arvizu and Agromod Produce, Inc. Mr. Lopez respectfully shows that Francisco Arvizu and Agromod Produce, Inc. failed to properly pay him wages owed for labor rendered, in violation of state and federal law.

**STATEMENT OF CLAIM**

1. Plaintiff brings this action for money damages against Defendants for violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq., and in the alternative, the Texas Minimum Wage Act ("TMWA"), breach of contract, and the Texas Theft Liability Act, Tex. Civ. Prac. & Rem. Code § 134.001 et seq.

## **JURISDICTION AND VENUE**

2. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

3. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff’s state law claims because they are closely related to the FLSA claims within the Court’s original jurisdiction. All claims relate to the failure to pay adequate wages and thus form part of the same case or controversy under Article 3 of the U.S. Constitution.

4. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b), as the events complained of occurred in relation to work performed at a warehouse located in the City of McAllen, Hidalgo County.

## **PARTIES**

5. Plaintiff Leonardo Hernandez Lopez is an individual residing in Hidalgo County, Texas.

6. Defendant Francisco Arvizu is a resident of Texas. His usual place of abode is 203 South 25<sup>th</sup> Street, Donna, Texas, 78537.

7. Defendant Agromod Produce, Inc. is a foreign corporation organized and existing under the laws of the State of Delaware, whose principal office is located at 700 South Bridge Street, Hidalgo, Texas, 78557. Agromod Produce Inc. is authorized to do business in Texas. Agromod Produce, Inc., has a registered agent, Raul Magana, who can be reached at 2501 Military Highway, Warehouse, Unit C-28, McAllen, Texas, 78503, Hidalgo County, Texas.

## FACTUAL ALLEGATIONS

8. On or about April 2009, Defendants hired Plaintiff to work at the Defendants' warehouse in McAllen, TX.

9. Plaintiff performed work for Defendants until about February 2010.

10. Plaintiff performed several tasks for Defendants, including the packing of papayas into boxes.

11. Defendants promised Plaintiff a salary commensurate to the federal minimum wage.

12. Defendants failed to pay Plaintiff a salary commensurate to the federal minimum wage.

13. Plaintiff regularly worked more than 40 hours a week for Defendants.

14. Defendants failed to pay Plaintiff time and a half for each hour worked over forty in a given workweek.

15. On February 22, 2010, Plaintiff complained to Defendants that he was not being paid commensurate to the federal minimum wage. Defendants terminated his employment because of these complaints.

16. Plaintiff attaches his verification of the factual allegations contained in this complaint as Exhibit A.

## CAUSES OF ACTION

### **I. Violation of the Fair Labor Standards Act ("FLSA")**

17. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

18. At all times relevant to this action, Plaintiff was employed by Defendants within the meaning of the FLSA, 29 U.S.C. § 203(d) and 29 U.S.C. § 203(g).

19. As an employee of Defendants, Plaintiff was engaged in commerce or in the production of goods for commerce, or was employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of 29 U.S.C. § 203.

20. Defendants failed to maintain complete and accurate records of the hours which Plaintiff worked.

21. Defendants did not pay Plaintiff for all of his work.

22. Defendants fired Plaintiff in retaliation for expressing concerns over the payment of wages.

23. The above-described actions of Defendants violated Plaintiff's rights under the Fair Labor Standards Act for which Plaintiff is entitled to relief pursuant to 29 U.S.C. § 218(b).

24. Defendants' failure to pay Plaintiff as specified above was willful.

25. Defendants' termination of Plaintiff violated the anti-retaliation prohibition of 29 U.S.C. § 215(a)(3).

## **II. Violation of the Texas Minimum Wage Act ("TMWA")**

26. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

27. At all times relevant to this action, Plaintiff was employed by the Defendants within the meaning of the Texas Minimum Wage Act, Texas Labor Code § 62.0012(6).

28. During Plaintiff's employment, Defendants failed to pay Plaintiff the state-mandated minimum wage for each hour that Plaintiff worked.

29. Defendants' failure to pay Plaintiff as specified above was willful.

### **III. Breach of Contract**

30. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

31. In performing the work, Plaintiff provided valuable services to Defendants.

32. Defendants accepted Plaintiff's services under such circumstances that Defendants reasonably knew that Plaintiff expected to be paid for his services.

33. Defendants had agreed to fully pay Plaintiff the prevailing minimum wage for his work.

34. Defendants failed to fully pay Plaintiff the prevailing minimum wage for his work.

35. Alternatively, if there was no contract covering Plaintiff's work, Plaintiff is entitled to damages pursuant to the common-law doctrines of *quantum meruit* and unjust enrichment.

### **IV. Violation of the Texas Theft Liability Act**

36. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

37. Defendants unlawfully appropriated, secured, or stole Plaintiff's service with the intent to avoid payment for services.

38. The above-described actions of Defendants constituted a violation of the Texas Theft Liability Act, for which Plaintiff is entitled to relief pursuant to Tex. Civ. Prac. & Rem. Code § 134.003 *et seq.*

#### **ATTORNEY'S FEES**

39. Plaintiff seeks attorney fees as a result of violations of the FLSA, 29 U.S.C. § 216(b), the TMWA, Texas Labor Code § 62.205, and Defendants' breach of an oral contract Tex. Civ. Prac. & Rem. Code § 38.001(8).

#### **JURY DEMAND**

40. Plaintiff requests that this case be decided by a jury as allowed by Texas Rule of Civil Procedure 216.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that Defendants be cited to appear and answer, and that, upon final hearing, Plaintiff have judgment against Defendants within the jurisdictional limits of this Court for:

- (a) his contract wages or, alternatively, for the value of his services;
- (b) his unpaid minimum wages and overtime, and an equal amount of liquidated damages;
- (c) his lost wages and liquidated damages equal to the lost wages;
- (d) compensatory damages for injuries suffered and costs incurred resulting from the retaliatory termination;
- (e) punitive damages for the retaliatory termination;

(f) actual damages for Defendants' theft of his services, and statutory damages under Tex. Civ. Prac. & Rem. Code § 134.005(a)(1);

(g) attorney's fees;

(h) pre- and post-judgment interest as provided by law, costs of court, and such other and further relief to which Plaintiff may justly be entitled.

DATED: September 2, 2010

Respectfully Submitted,

/s/ Elliott Tucker

Elliott Thomas Tucker  
Federal Bar No. 1074776  
California State Bar No. 260586  
Corinna Spencer-Scheurich  
Federal Bar No. 619913  
State Bar No. 24048814  
**South Texas Civil Rights Project**  
P.O. Box 188  
San Juan, TX 78589  
(956) 787-8171 phone  
(956) 787-6348 fax  
ATTORNEYS FOR PLAINTIFF



Verifications

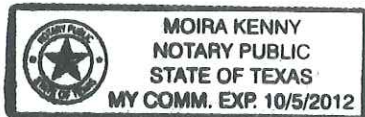
I hereby certify that the factual statements in the attached petition are true.

\_\_\_\_\_  
Plaintiff

Subscribed and sworn to before me, the undersigned authority, by Leonardo Hernandez Lopez, on this   5   day of   May  , 2010.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



Certificate of Translation

I hereby certify that I am fluent in the English and Spanish languages, and that the foregoing Petition of Leonardo Hernandez Lopez has been translated into Spanish by me, and that I have read the foregoing Petition in Spanish to him who stated to me that he understood its contents and signed it.

\_\_\_\_\_  
Translator



AO 440 (Rev. 12/09) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Leonardo Hernandez Lopez

*Plaintiff*

v.

Francisco Arvizu, and Agromod Produce, Inc.

*Defendant*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Agromod Produce, Inc.  
ATT: Raul Magana, Registered Agent  
2501 Military Highway  
Warehouse Unit C-28  
McAllen, Texas 78503

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Elliott Tucker  
South Texas Civil Rights Project  
PO Box 188  
San Juan, Texas 78589  
Office (956) 787-8171  
fax (956) 787-6348

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Leonardo Hernandez Lopez

*Plaintiff*

v.

Francisco Arvizu, and Agromod Produce, Inc.

*Defendant*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Francisco Arvizu  
203 South 25th Street  
Donna, Texas 78537

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Elliott Tucker  
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San Juan, Texas 78589  
Office (956) 787-8171  
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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

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☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Leonardo Hernandez Lopez

(b) County of Residence of First Listed Plaintiff Hidalgo County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Elliott Tucker, South Texas Civil Rights  
Project, PO 188, SAN AN, TX 78589 (956) 787-8771

## DEFENDANTS

Francisco Arvizu; Agromod Produce, Inc.

County of Residence of First Listed Defendant Hidalgo County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC § 216

Brief description of cause:

UNPAID WAGES

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$23,154.40

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/02/2010

SIGNATURE OF ATTORNEY OF RECORD

Elliott Tucker

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_